MOTION FILED

NOV 18 1974

LIBRARY

SUPREME COURT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1744

JULIUS E. FOSTER,

Petitioner,

v.

AMERICAN MACHINE & FOUNDRY CO., *et al.*,

Respondents.

MOTION FOR LEAVE TO FILE AND PETITION FOR REHEARING

ROBERT H. RINES
Rines & Rines
10 Post Office Square
Boston, Massachusetts 02109

PAUL J. FOLEY,
425 13th Street, N.W.
Washington, D.C. 20004

Attorneys for Petitioner

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1744

JULIUS E. FOSTER,

Petitioner,

v.

AMERICAN MACHINE & FOUNDRY CO., *et al.*,

Respondents.

MOTION FOR LEAVE TO FILE AND PETITION FOR REHEARING

Since the intervening circumstances referred to in this Petition for Rehearing have just been published, have just come to the attention of petitioner's counsel, and are promptly being called to this Supreme Court's attention, favorable action on the motion to extend the time for filing this petition for a rehearing is respectfully requested.

As will be evidenced from annexed copy of the just-distributed Law Journal of the American Patent Law Association (APLA), Volume 11, No. 3, the ponderous constitutional and statutory issues of the present Foster case as presented in the original petition for a writ of certiorari herein, *have skyrocketed into national legal prominence.*

As the editorial of the Law Journal itself points out:

> "When we first decided on this issue, Foster II, which a consensus of authors considers a most significant departure from the present law in this area, had not as yet been handed down. Now with this new decision, the treatment of this subject should be of timely interest."

Unknown to your petitioner, four of the leading lawyers of this country, representing some 3800 lawyers of the APLA, have devoted this complete Law Journal to a discussion of the far-reaching disastrous effects of compulsory licensing of valid patents stemming from the Second Circuit Court of Appeals' decision in this Foster case.

We have indicated some of the more salient comments and fears of these legal authorities by marginal markings in the annexed copy of this Law Journal.

To a man, these authorities have condemned the unconstitutional and radical usurpation of power exercised by the Court of Appeals in forcing Foster to a compulsory license under his admittedly valid patent and to accept payment terms directly contrary to the statutes, as set forth in the very questions presented in the original petition for certiorari herein.

They have, moreover, pointed out the detrimental effects that this decision will have on the whole

American industrial community and economy, particularly in these most difficult economic times that are upon us, if the Supreme Court refuses to review this decision.

To our knowledge, never before has a complete Law Journal been so dedicated to a discussion of the detrimental effects of a court of appeals decision—and we earnestly believe this points out the urgent necessity for this Supreme Court to reconsider its denial of the petition for certiorari herein.

Rarely has so radical a decision, pregnant with far-reaching constitutional and economic questions in the patent field, been presented to the Supreme Court; and this imposing protest and warning of dire consequences to our economy by the APLA should be heeded . . . and heeded to the extent of granting the petition for certiorari.

It is hereby certified that this Petition for Rehearing is well founded in law and fact, that it is based upon substantial grounds in intervening circumstances of substantial and controlling effect, that it is presented in good faith, and that it is not interposed for the purposes of delay but in the interest of justice, due process of law and avoiding duplication of litigation.

Respectfully submitted,

ROBERT H. RINES
Rines & Rines
10 Post Office Square
Boston, Massachusetts 02109

PAUL J. FOLEY
425 13th Street, N.W.
Washington, D.C. 20004

Attorneys for Petitioner